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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 04th December, 2019

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W.P.(C) 6692/2014

SR. DIVISIONAL MANAGER, LIC OF INDIA Petitioner

Through: Mr. Soumyajit Pani, Mr. Chittaranjan
Singh, Advocates

versus

RENUKA SHARMA

..... Respondent

Through: Mr. Inder Jit Singh, Advocate along
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the award of the Industrial Tribunal whereby the Industrial Tribunal set aside the penalty of removal from service of the respondent and imposed penalty of reduction of three stages of basic pay of time scale in lieu of penalty for removal from service.

2. The respondent was working with the petitioner as an Assistant with effect from 01st March, 1994. On 25th March, 2008, the respondent applied for and was granted leave for 35 days from 11th April, 2008 to 15th May, 2008 for going to Singapore on the ground that her husband had been deputed in a job in Singapore.

3. On expiry of the aforesaid period, the respondent did not join the duty whereupon letters dated 12th June, 2008 and 25th August, 2008 were sent to her asking her to immediately join the duties. The respondent sent a letter on

28th August, 2008 seeking extension of leave up to November, 2008.

4. Vide email dated 18th September, 2008 and letter dated 04th October, 2008, the respondent was again advised to immediately join the duties failing which disciplinary action shall be initiated against her.

5. On 15th November, 2008, a show cause notice-cum-charge sheet was issued to the respondent proposing to impose penalty of removal from service on account of unauthorized absence since 16th May, 2008 to which a reply was received on 27th November, 2008 and the respondent was allowed to join the duty subject to the disciplinary proceedings.

6. On 27th December, 2008, the respondent applied for sick leave from 27th December, 2008 to 10th January, 2009. On 28th December, 2008, the respondent applied for NOC for travelling to Singapore. However, without waiting for the approval, the respondent left for Singapore on 28th December, 2008.

7. The respondent did not appear before the enquiry proceedings despite being informed vide letters dated 26th December, 2008, 05th January, 2009, 16th January, 2009, 16th February, 2009, 05th March, 2009, 20th March, 2009, 06th April, 2009 and 20th April, 2009. The respondent also failed to join the duties despite letters dated 24th January, 2009, 14th February, 2009 and 03rd March, 2009. However, the respondent replied to the charge sheet vide letter dated 25th April, 2009 in which she pleaded her inability to join the duty because her husband was working in Singapore.

8. Vide report dated 30th April, 2009, the Enquiry Officer held that the charge of unauthorized leave since 16th May, 2008 was proved and established against the respondent. Copy of the enquiry report was sent to the respondent on 01st May, 2009. The respondent filed her reply dated 12th

May, 2009 in which she reiterated her grievances as explained in her letter dated 18th March, 2009 and 25th April, 2009.

9. On 27th May, 2009, a show cause notice was issued to the respondent to show cause as to why the penalty of removal from service be not imposed on her to which she replied on 04th June, 2009.

10. On 22nd June, 2009, the disciplinary authority imposed penalty of removal on the respondent under regulation 39(1)(f) of LIC of India Staff Regulation, 1960 for unauthorized absence from 16th May, 2008 to 26th November, 2008 and 27th November, 2008 to 22nd June, 2009 (Total 373 days).

11. On 15th September, 2009, the respondent filed an appeal before the Appellate Authority, Zonal Manager which was rejected on 22nd February, 2010. On 04th August, 2010, the respondent filed a memorial before Chairman-cum-Managing Director which was rejected on 27th January, 2011.

12. The respondent raised an industrial dispute which was referred to the Industrial Tribunal. The respondent sought reinstatement in the statement of claim on the averments that she went to Singapore after taking leave as her husband was posted there; the health of children deteriorated in Singapore whereupon she requested for extension of leave on 28th August, 2008; she returned back and resumed work on 27th November, 2008 and worked till 27th December, 2008 when her husband fell ill in Singapore and therefore, she rushed back of Singapore on 28th December, 2008 to take care of her husband; her husband suffered from hypothyroidism and she was advised to stay there and seek further extension of leave.

13. The petitioner contested the respondent's claim on the ground that the

respondent was granted leave for 35 days from 11th April, 2008 to 15th May, 2008 for going to Singapore and she remained unauthorized leave from 15th May, 2008 onwards; the respondent did not resume the duties despite letters dated 12th June, 2008, 25th August, 2008, email dated 18th September, 2008 and letter dated 04th October, 2008; show cause notice-cum-charge sheet was issued to the respondent on 15th November, 2008; the respondent was permitted to join the duties on 27th November, 2008 reserving the right to proceed for over-stay abroad; the respondent again went abroad on 28th December, 2008 without any sanctioned leave; the respondent did not join the enquiry proceedings despite letters dated 26th December, 2008, 05th January, 2009, 16th January, 2009, 16th February, 2009, 05th March, 2009, 20th March, 2009, 06th April, 2009 and 20th April, 2009; the Enquiry Officer sent letters dated 05th January, 2009, 16th January, 2009, 16th February, 2009, 05th March, 2009 and 20th March, 2009 duly received by the respondent who chose not to appear before the enquiry proceedings.

14. The Industrial Tribunal framed following issues on 26th March, 2012:

- “(i) *Whether enquiry conducted by the management was not just, fair and proper?*
- (ii) *Whether punishment of removal from service is disproportionate to her alleged misconduct?*
- (iii) *To what relief the claimant is entitled?”*

15. The respondent appeared in the witness box as WW1 whereas the petitioner examined Meenakshi Saxena, Administrative Officer as MW1.

16. The learned Tribunal held that the enquiry conducted by the Enquiry Officer was just, fair and proper in consonance with the principles of natural justice as full opportunity was given to the respondent to join the proceedings. The relevant findings of Industrial Tribunal on issue No.1 is

reproduced hereunder:

“33. In view of reasons detailed above, it is evident that the enquiry conducted by the Enquiry Officer was in consonance with principles of natural justice. He gave full opportunity to the claimant to join the proceedings and defence herself. However the claimant opted to leave for Singapore on 28.12.2008 thereby making it next to impossible to attend the enquiry proceedings. Principles of natural justice were not to be accorded to her in absentia. These facts make it apparent that the enquiry was just, fair and proper. No illegality emerged out of enquiry proceedings and report of the Enquiry Officer; Issue relating to virus of the enquiry cannot be answered in favour of the claimant. Resultantly, it is concluded that the enquiry conducted by the Corporation was just fair and proper. The issue is, therefore, answered in favour of the Corporation and against the claimant.”

(Emphasis supplied)

17. With respect to issue No.2, the Industrial Tribunal held that the punishment of removal from service awarded by the petitioner to the respondent was discriminatory. The Industrial Tribunal noted that V.S. Iyer and Harish Chand Bhatnagar had gone abroad and had overstayed their sanctioned leave but were not awarded punishment of removal. V.S. Iyer was awarded penalty of reduction in basic pay by two stages whereas Harish Chand Bhatnagar was awarded penalty of reduction in basic pay by three stages. Applying the principle of parity, the Industrial Tribunal set aside the reinstatement and awarded punishment of reduction in basic pay by three stages.

Submissions of Petitioner

18. Without prejudice, it was submitted that the respondent committed gross misconduct and disobedience by remaining on an unauthorized absence for which a fair enquiry was conducted by the Enquiry Officer and

the petitioner chose not to contest the same. There was no violation of principles of natural justice and the punishment of removal of the respondent from service did not warrant any interference by the Industrial Tribunal.

19. The punishment imposed by the authority ought not to have been interfered. Once the charge has been proved, the disciplinary authority is empowered to impose appropriate punishment and the learned Tribunal had no jurisdiction to substitute the punishment imposed by the disciplinary authority. Reliance was placed on ***State of Punjab v. Surjit Singh Conductor***, AIR 1996 SC 1388. Reliance was also placed on ***Deputy Commissioner, Kendriya Vidyalaya Sangathan v. J. Hussain***, (2013) 10 SCC 106 in which the Supreme Court reiterated the settled position of law that the Tribunal has a limited scope for interfering in the disciplinary proceedings against an employee.

20. The punishment awarded by the employer is not be interfered unless the punishment awarded shocks the conscience of this Court. Reliance was placed on ***B.C. Chaturvedi v. Union of India***, 1995 SCC (6) 749.

21. Equality before law is a positive concept which cannot be enforced in a negative manner. Reliance was placed on ***Gursharan Singh v. NDMC***, 1996 (2) SCC 459.

22. The *doctrine* of discrimination is founded upon existence of an enforceable right. Reliance was placed on ***State of Haryana v. Ram Kumar Mann***, (1997) 3 SCC 321 in which Supreme Court held that a wrong order cannot be a foundation for claiming equality as two wrongs do not make a right.

23. Without prejudice, it was submitted that the Industrial Tribunal compared the cases of the respondent with V.S. Iyer and H.C. Bhatnagar

case without considering that both those cases were different in as much as both these officers had participated in the enquiry and substantiated their claim with documents whereas the respondent herein neither participated in the enquiry despite several opportunities nor submitted any document to support the unauthorized leave. Reliance was placed on ***Obettee (P) Ltd. v. Mohd. Shafiq Khan***, (2005) 8 SCC 46 and ***Lucknow Kshetriya Gramin Bank v. Rajendra Singh***, (2013) 12 SCC 372.

Submissions of Respondent

24. The impugned award is fair and justified as the learned Tribunal balanced the equalities between the parties by comparing the petitioner with Mr. V.S. Iyer and Mr. H.C. Bhatnagar.

25. The punishment of removal from service imposed on respondent was discriminatory. V.S. Iyer and H.C. Bhatnagar went abroad without permission but were not awarded punishment of removal from service.

26. Awarding different punishments to similarly situated persons constitutes clear discrimination. Reliance was placed on ***Ramdev v. Union of India***, 2009 (121) FLR 13.

27. The doctrine of equality applies to all who are equally placed. Reliance was placed on ***Rajender Yadav v. State of M.P.***, 2003 (3) SCC 73.

28. The petitioner's contention that wrong decision does not entitle other to claim the benefits, is misleading and misconceived. A conscious decision was taken by senior officers in the other cases and it has not been brought on record as to what action has to be taken against the concerned officers for wrong decisions taken by them.

29. The Industrial Tribunal has the power to interfere with the punishment

inflicted by the authority to grant appropriate relief. Reliance was placed on ***D.T.C. v. Jagdish Chander***, 2005 (120) DLT 664.

30. The petitioner was in the habit of taking arbitrary decisions to suit the whims and likes/dislikes of its officers. Reliance was placed on ***LIC of India v. Triveni Sharan Mishra***, 2014 (IV) LLJ 257 and ***LIC v. S. Vasanthi***, (2014) 9 SCC 315.

Discussions and Findings

31. The petitioner applied for and was granted leave for 35 days to visit Singapore from 11th April, 2008 to 15th May, 2008. The petitioner failed to join back the duties on 16th May, 2008 despite letters dated 12th June, 2008 and 25th August, 2008.

32. A show cause notice-cum-charge sheet was issued to the petitioner on 15th November, 2008 to show cause as to why penalty of removal be not imposed.

33. The petitioner joined back the duties on 27th November, 2008 subject to the enquiry proceedings but again proceeded on unauthorized leave on 28th December, 2008.

34. The petitioner chose not to appear before the Enquiry Officer to contest the enquiry despite repeated written intimations.

35. The Enquiry Officer fairly conducted the enquiry after affording a reasonable opportunity to the petitioner. There is no violation of the principles of natural justice. The Enquiry Officer submitted his report on 30th April, 2009.

36. The disciplinary authority imposed the penalty of removal on the respondent under Regulation 39(1)(f) of LIC of India Staff Regulation 1960 for unauthorized absence of 373 days.

37. The respondent filed an appeal before the Appellate Authority, Zonal Manager which was rejected. The respondent, thereafter, filed a memorial to the Chairman which was also rejected.

38. The learned Tribunal held that the enquiry was just, fair and proper. There is no challenge to the findings of the Enquiry Officer on Issue No.1.

39. The Industrial Tribunal held the punishment imposed on the respondent as discriminatory on the ground that lower punishment was awarded to similarly situated employees. This finding is under challenge on the ground that the Article 14 cannot be enforced in negative manner. Without prejudice, it was submitted that the two cases referred to by the Tribunal are entirely different and not comparable.

40. The law is well settled that equality before law is a positive concept and it cannot be enforced in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot claim order on principle of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. In **Gursharan Singh v. NDMC (supra)**, the Supreme Court held that if an order is passed in favour of a person who is not entitled to the same, the others cannot claim parity because it would amount to directing an illegal procedure/order to continue and perpetuate further. Relevant portion of the said judgment is reproduced hereunder:

“9. Apart from that even if it is assumed that concession was shown to such stall-holders by the NDMC the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution. Having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the

same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.....

Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution.”

(Emphasis supplied)

41. In **State of Haryana v. Ram Kumar Mann**, (1997) 3 SCC 321, the Supreme Court observed that the doctrine of discrimination is founded upon the existence of an enforceable right to entitle a person to equal treatment for the enforcement thereof. A wrong decision does not give a right to a person

to enforce the wrong order and claim parity or equality.

42. This case is squarely covered by the principles laid down by the Supreme Court in ***Gursharan Singh v. NDMC*** (*supra*) and ***State of Haryana v. Raj Kumar Maan*** (*supra*). Applying the principles laid down by the Supreme Court to the present case, this Court holds that the respondent who remained on an unauthorized leave without approval since 16th May, 2008, had no enforceable right to reinstatement. The doctrine of equality has been wrongly applied by the learned Tribunal which is contrary to the well settled principles laid down by the Supreme Court in the above judgments.

43. Even otherwise, the cases of V.S. Iyer and H.C. Bhatnagar are not comparable as those officers appeared before the Enquiry Officer and substantiated their claims whereas the respondent, in the present case, choose not to appear before the Enquiry officer to substantiate her claim. This difference by itself makes the comparison impermissible.

44. Assuming for the sake of arguments that the cases of V.S. Iyer and H.C. Bhatnagar were similar, this Court is not satisfied with the correctness of the decision in those cases and therefore, claiming equality on the basis of a wrong decision is not permissible in view of the principles laid down by Supreme Court in ***Gursharan Singh v. NDMC*** (*supra*) and ***State of Haryana v. Raj Kumar Maan*** (*supra*)

45. This Court is satisfied that the respondent is guilty of gross misconduct of unauthorized absence since 16th May, 2008 and the punishment inflicted by the petitioner is proportionate to her misconduct. The learned Tribunal gravely erred interfering with the punishment of removal of service of the respondent which is contrary to the well-settled law. By unnecessary interference by the learned Tribunal, the respondent has

made a fortune by receiving more than Rs.12,00,000/- under Section 17B of the Industrial Disputes Act during the pendency of this petition.

Conclusion

46. The writ petition is allowed and the impugned award dated 23rd April, 2014 is set aside. The Respondent's statement of claim is dismissed and the punishment of removal of the respondent is upheld.

DECEMBER 04, 2019
ds

J.R. MIDHA, J.

